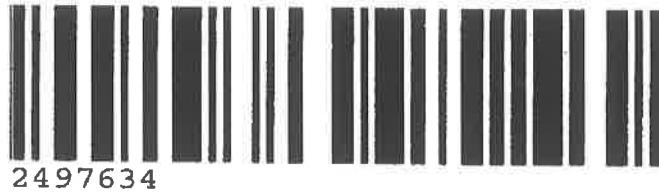


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CaseNumber: WR-72,735-03

EventDate: 09/13/2012

Style 1: RAMIREZ, JOHN HENRY

Style 2:

Event code: RR ADD'L VOLUME

EventID: 2497634

Applicant first name: JOHN HENRY

Applicant last name: RAMIREZ

Offense: 19.03

Offense code: Capital Murder

Trial court case number: 04-CR-3453-C(2)

Trial court name: 94th District Court

Trial court number: 321780094

County: Nueces

Trial court ID: 267

Event map code: GENERIC

Event description: Habeas Corpus - Capital Death

Event description code: 11.071

Remarks: VOL. 4 OF 6 VOLS.--WRIT HEARING HELD
OCT. 21, 2011

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REPORTER'S RECORD
APPELLATE COURT NO. AP-76,100
TRIAL COURT CAUSE NO. 04-CR-3453-C
VOLUME 4 of 6 VOLUMES

THE STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 94TH JUDICIAL DISTRICT
JOHN HENRY RAMIREZ) NUECES COUNTY, TEXAS

WRIT OF HABEAS CORPUS (Cont'd)

On the 21st day of October, 2011, the
following proceedings came on to be heard in the
above-entitled and numbered cause before the HONORABLE
BOBBY GALVAN, Judge Presiding, held in Corpus Christi,
Nueces County, Texas:

Proceedings reported by Stenograph
Machine.

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2011 DEC 12 A 11:01
CLERK OF DISTRICT COURT
NUECES COUNTY, TEXAS
CITY & COUNTY CLERK

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1 APPEARANCES:

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21

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24

25

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1 P R O C E E D I N G S

2 October 21, 2011

3 THE COURT: All right. Let's call
4 Cause No. 04-3453-C, State of Texas versus John
5 Ramirez. Appearances?

6 MR. NORMAN: Doug Norman for the State
7 of Texas, Your Honor.

8 MR. GROSS: Good morning, Your Honor.
9 John Gross for John Henry Ramirez.

10 THE COURT: All righty. I suppose where
11 are we? Is Mr. Jones on the stand?

12 MR. JONES: Yes.

13 THE COURT: His direct --

14 MR. NORMAN: I believe we concluded
15 direct, Your Honor.

16 THE COURT: We concluded direct, right.
17 So I guess you're on cross?

18 MR. GROSS: Yes, sir.

19 MR. JONES: You want me to take the
20 stand?

21 THE COURT: Yes, sir. I think you're
22 still under oath.

23 MR. JONES: I'm still under oath.

24 THE COURT: You may proceed.

25 MR. GROSS: Thank you, Your Honor.

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1 GRANT JONES,
2 having been previously duly sworn, testified as
3 follows:

4 CROSS-EXAMINATION (Cont'd)
5 BY MR. GROSS:

6 Q. Mr. Jones, when we left off we were talking
7 about some vouchers that you had submitted in the
8 case, sir?

9 A. Yes, sir.

10 Q. And since then, I've found some more
11 vouchers, and I was wondering if I could show them to
12 you and make sure those look complete.

13 MR. GROSS: May I approach, Your Honor?

14 THE COURT: Yes, sir.

15 (Brief pause in proceedings.)

16 Q. (BY MR. GROSS) What I did, Mr. Jones, is I
17 had the district clerk on Defendant's Exhibit 4 pull
18 up all of the invoicing for both Mr. Garza and for you
19 in the case.

20 A. Uh-huh.

21 Q. And what I was wanting to do is just confirm
22 that the pages that regard you and your billing is
23 accurate and complete.

24 A. Looks like it. Yep. This -- this looks like
25 what I filed. If this was in the clerk's record, then

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1 this is it.

2 Q. And if you could, please, Mr. Jones, just
3 look at those vouchers and make sure they accurately
4 reflect the hours you invested in the case. I assume
5 they do, but I just want to make sure they look
6 correct to you.

7 A. All I can tell you is that this looks -- this
8 appears to be an official copy of my fee application.
9 That's all I can tell you.

10 Q. And like -- I assume like me, Mr. Jones, when
11 I do these trials on capital cases --

12 A. Uh-huh.

13 Q. -- I submit all my hourlies that I expend in
14 a case so that I'm properly compensated. You do the
15 same?

16 A. Right. As I do -- as I do a task, I write it
17 down and how much time I spent on it, and then I tally
18 it up at some appropriate time.

19 Q. And so the vouchers that you've looked at
20 this morning in that Defense exhibit, that accurately
21 reflects the time you spent on the case, correct?

22 A. Yes, that's the time that I billed for, yes.

23 Q. And the time you billed also includes all the
24 time you spent on the case, correct?

25 A. Well, that's a good question. I generally

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1 spend more time on a case than I bill for, but -- and
2 I bill for things that I -- you know, that -- I don't
3 bill for all the time I'm thinking about the case or
4 if I'm doing -- but this is the best record of the
5 time that I spent on this case.

6 Q. Okay. And so, for instance, if you
7 interviewed witnesses or whatever, that would all be
8 reflected in your billings that you submitted in the
9 case?

10 A. Should be, yes. If I interviewed a witness,
11 the time that I took to do that, I would try to put
12 that down, yes.

13 Q. Who would you say was in charge of the
14 sentencing phase of this trial, you or Mr. Garza?

15 A. If I -- if I recall correctly I think it was
16 going to be my -- I was going to take the lead on that
17 part of the trial.

18 Q. Had you had any -- with regards to jury
19 selection in the case, how did you and Mr. Garza
20 determine who was going to do the questioning of the
21 veniremen? Was it just whoever came in you decided at
22 the time who was going to take that person?

23 A. I don't recall if we had -- I'd have to go
24 back and look at the record whether we split -- I did
25 some and he did some. I think I probably did more

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1 than he did, but I -- I can't remember exactly.

2 Q. What was the juror profile that you were
3 looking for, Mr. -- Mr. Jones?

4 A. Now, that's a good question. In a capital
5 murder case where the death penalty is possible, my
6 first concern is to identify the jurors who have
7 radical persuasions. Many times those people are
8 discovered in the initial -- when the jurors are
9 qualified, and then before we get the panel, we
10 actually question them; and I want to identify those
11 that -- first, when I say radical persuasions,
12 particularly as to the death penalty. And the best
13 indicator I found for that on the -- the
14 questionnaires, part of the questionnaire used in this
15 case, and this questionnaire is used, you know, pretty
16 regularly in this county, is the jurors are asked to
17 write in his own or her own handwriting how they feel
18 about the death penalty.

19 And I have found over the many cases that
20 I've tried is that is one of the best indicators of
21 where the person's mind is at, and many times in
22 cases, I will rate the juror. Right up, without even
23 questioning him, I'll rate -- I'll target him for a
24 strike, I'll either try to get him for cause or try
25 to -- or I'll use a peremptory depending on how

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1 extreme it is.

2 The other thing I'm concerned about is
3 to -- I want to get jurors who are intelligent. I
4 would rather get people who have educations or have
5 jobs that require education. I like to have people
6 that have children. I -- and then after that, I'm
7 particularly interested in does the juror understand
8 what the issues are in the case and what -- what
9 they're going to be asking -- be asked to do, and --

10 Q. In this particular case --

11 A. Yes.

12 Q. -- Mr. Jones, did you have a juror profile
13 determined?

14 A. A jury profile?

15 Q. A juror profile in this particular case?

16 A. What do you mean by that, sir?

17 Q. Well, let me try it this way: Who decided
18 who the mitigation investigator would be in this case?

19 A. I did. Well, I say I did. We -- I think we
20 made an attempt to get -- try to get somebody from out
21 of town and it didn't work out so we ended up using
22 Dr. Martinez, I think was our main -- their main
23 investigation on that.

24 Q. And I take it that --

25 A. Martinez is still Martinez by the way, but

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1 he's from Louisiana.

2 Q. And Dr. Martinez, you-all relied upon his
3 report in putting together your -- your mitigation
4 case, correct?

5 A. His report is the primary source of the
6 Defendant's social history. And in his report, which
7 is lengthy, the -- what mitigating factors are in the
8 case, probably most of them are found in that report,
9 or leads to them.

10 Q. And so is it accurate to say that your
11 mitigation case relied upon his report? That's fair
12 to say, right?

13 A. Yes. He was going to be called as a witness
14 for sure. Uh-huh.

15 MR. GROSS: No further questions, Your
16 Honor.

17 THE COURT: All right. Anything else?

18 MR. NORMAN: Yes, Your Honor, just
19 briefly.

20 THE COURT: Yes, sir.

21 REDIRECT EXAMINATION

22 BY MR. NORMAN:

23 Q. Mr. Jones, would your time sheets
24 specifically reflect the name of every witness that
25 you interviewed in this case?

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1 A. I try.

2 Q. Well --

3 A. I -- I could not swear here that I had --
4 there was a witness -- if I interviewed a witness and
5 I didn't bill for it. I couldn't say that occurred.
6 I know in other non -- just regular cases, that
7 sometimes I interview people and don't bill for it
8 because I don't make a memorandum and I can't go
9 back -- I can't remember how much time I spent, so I
10 just forget it.

11 Q. Would they reflect, for instance, people that
12 you may have talked to at the time of trial in the
13 hallways or otherwise?

14 A. No. These are people where I would go visit
15 at their offices or homes or if I go out in the field
16 or having meetings at my office where I invite people
17 to come. But casual, no, generally, I wouldn't bill
18 for that. And I also don't bill for little short
19 telephone conversations that I have sometimes, you
20 know, little less than a minute 102 conversations. I
21 just don't have time to write them down.

22 Q. If you visited with the family as a whole,
23 would your time sheet reflect every name on the list
24 of family members?

25 A. Not necessarily. I might say "visit with the

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1 Defendant's family" or -- it depends on, you know, the
2 situation.

3 Q. Would your time sheet reflect every witness
4 that was interviewed on your behalf by your
5 investigator and mitigation expert?

6 A. No. In other words, I don't bill for -- I
7 didn't bill for -- no. I just bill for things that I
8 personally did.

9 Q. So --

10 A. In other words -- like if Dr. Martinez
11 interviewed a witness, I would not bill for -- he
12 billed for that, not me.

13 Q. Let me ask you: Did your questioning -- do
14 you believe your questioning weeded out jurors who
15 would automatically vote for the death penalty based
16 purely on the guilt-innocence phase of trial? In
17 other words, does your questioning weed out jurors who
18 would automatically vote for death simply because
19 Mr. Ramirez had been found guilty of capital murder,
20 murder in the course of robbery?

21 Q. That was one of the principle objects, things
22 that we wanted to accomplish, is to weed out -- I have
23 an unflattering name for these people, people of
24 radical persuasions. You know, that goes both ways.
25 There are some people that are radically opposed to

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1 the death penalty, and there are some people that want
2 to be invited to the execution.

3 But once again, the best indicator or
4 clue as to where the juror's mind is and would direct
5 us in our later -- in our questioning of the juror was
6 that written -- where they were asked to write in
7 their own handwriting, and there's some astonishing
8 statements in some of those things. But we would
9 target those, the radical ones that -- you know,
10 some -- we would target them for a challenge for cause
11 or to try to set them up for a challenge for cause or
12 mark them for a peremptory challenge if they were, you
13 know, close to the top of the list.

14 Q. And would your evaluation of the jurors be
15 based both under questioning of them and on the juror
16 questionnaires, the written juror questionnaires?

17 A. Yeah, both.

18 Q. Both?

19 A. Yeah, and then we would rate them. We had a
20 one to -- I think we had a one to five, with one being
21 the best and five being the worst, and then -- and
22 then we would have to -- sometimes we would change
23 those, but tried to keep track of it as we went along.

24 MR. NORMAN: Your Honor, at this time I
25 have copies of the juror questionnaires, confidential

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1 juror questionnaires. Since Mr. Jones was a trial
2 participant, I would like to introduce these through
3 him.

4 THE COURT: Okay.

5 MR. NORMAN: May I approach the witness?

6 THE COURT: Yes, sir.

7 MR. NORMAN: Co-counsel I don't believe
8 has seen these.

9 MR. GROSS: I take your word on it. I
10 have no objection to admitting them, Your Honor.

11 MR. NORMAN: If that's okay, I will offer
12 these and they are confidential so --

13 THE COURT: Well, you can admit them
14 and then we'll put them under seal.

15 MR. NORMAN: Exactly, Your Honor, I was
16 hoping to do that.

17 THE COURT: Absolutely.

18 MR. NORMAN: May I approach?

19 THE COURT: Yes, sir. No objection,
20 Mr. Gross?

21 MR. GROSS: No objection.

22 THE COURT: All right, it's admitted.

23 MR. NORMAN: I pass the witness, Your
24 Honor.

25 THE COURT: Anything else?

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1 MR. GROSS: Just wanted to clarify,
2 Your Honor, now that Defendant's Exhibit 4 has been
3 identified by both Mr. Jones and Mr. Garza as
4 accurately reflecting their time in the case, we would
5 would offer Defendant's Exhibit 4 into evidence.

6 MR. NORMAN: I have no objection, Your
7 Honor.

8 THE COURT: Admitted.

9 MR. GROSS: And I have no further
10 questions.

11 THE COURT: All right. Mr. Jones, you're
12 free to go about your business, and I guess you have a
13 witness?

14 MR. GROSS: Yes, Your Honor, and he's
15 indicated he's across the hall and available at 10:00.

16 THE COURT: All right. We'll resume at
17 10:00.

18 MR. GROSS: All right, sir. Thank you.
19 (Short recess.)

20 THE COURT: Call your witness. Call
21 Mr. Perkins?

22 MR. GROSS: Yes, sir.

23 (Oath administered.)

24 THE COURT: Be seated. You may proceed.

25 MR. GROSS: Thank you, sir.

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1 ERIC PERKINS,
2 having being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. GROSS:

5 Q. Would you please tell us your name, sir.

6 A. Eric Perkins.

7 Q. What do you do for a living, Mr. Perkins?

8 A. I'm an attorney.

9 Q. What type of law do you practice?

10 A. Largely criminal, but a smattering of family
11 law and general litigation and business practice.

12 Q. How long have you been an attorney?

13 A. 22 years.

14 Q. And what county primarily do you practice?

15 A. Nueces.

16 Q. Which is Corpus Christi?

17 A. Yes, it is.

18 Q. Are you board certified?

19 A. I am not.

20 Q. Have you handled capital murder death penalty
21 trials before?

22 A. Trial, death penalty, yes.

23 Q. Approximately how many?

24 A. Well, I've had one death penalty trial, and
25 six other nondeath penalty cases.

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1 Q. Have you taken continuing legal education
2 classes regarding selection of juries, for instance,
3 in death penalty classes?

4 A. I have and I am currently a member of the
5 State Bar College.

6 Q. The -- the C.L.E. that you've taken, was it
7 offered by the Center for American International Law
8 or T.C.L.A. or which --

9 A. Both, both, and the Capital Defense Lawyer's
10 Project, and I think it's the American Center out of
11 Plano.

12 Q. Now, when you took the courses, for instance,
13 at C.A.I.L., C-A-I-L, the Center for American
14 International Law, did you take C.L.E. that covered
15 the -- what's called the Colorado method of Jury
16 Selection?

17 A. I've taken several courses on the Colorado
18 method, yes.

19 Q. And are you also familiar with the Texas
20 Standards for Capital Practitioners?

21 A. I'm familiar with them, and I certainly
22 haven't committed them to memory.

23 Q. You are familiar, though, that the Texas
24 Standards for Capital Defenders of Trial Cases require
25 a mitigation expert in addition to a psychologist, in

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1 addition to an investigator as a minimum for a trial?

2 A. I -- I understand that those requirements
3 exist. I also understand that those requests are not
4 always either granted or made, made or granted.

5 Q. In Nueces County?

6 A. And in some of the other counties I practice
7 in. I had a capital case in Kindell County and ran
8 into the same problems.

9 Q. Now, the --

10 A. And -- and Jim Wells County just this year,
11 same problems.

12 Q. Could you tell us just briefly what your
13 understanding of the Colorado method of Jury Selection
14 is in death cases?

15 A. Sure. The Colorado method asks the Defense
16 attorneys to make certain assumptions about a
17 person's -- the venireperson's either anti or pro
18 death penalty proclivities. You rate those persons on
19 a scale of one to seven; seven being a person's
20 automatic death penalties is what we call them,
21 A.D.P.s. And then number ones are called automatic
22 lives.

23 The Colorado method involves categorizing
24 these people, at least giving them a preliminary
25 category prior to actually conducting the individual

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1 voir dire. And then during the course --

2 Q. Let me pause you for just one minute to
3 interject.

4 A. Sure. So;.

5 Q. Is it the accepted practice in the capital
6 defendant community at the trial level to make
7 decisions solely on questionnaires or does it also
8 require interviewing them at individual jury
9 selection?

10 A. Oh, absolutely. No, the questionnaire, in
11 fact, can be a very misleading initial starting point.
12 So you've got to go over the questionnaires
13 exhaustively. We try to rank the individuals off the
14 questionnaires to give them the preliminary ranking as
15 to automatic death penalty or automatic life or
16 somewhere on the one to seven scale prior to
17 interviewing them individually.

18 And then during the course of the
19 individual voir dire of the person, it's important to
20 have one member of the team just monitor the questions
21 and answers and to adjust the rankings accordingly by
22 the answers that are being given.

23 Q. Now, have you been surprised, like I have
24 when I've tried death penalty trials where you thought
25 a venireman was, say, a one, and then after you've

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1 interviewed them, they end up being like an eight or
2 nine? Have you been surprised like that also and vice
3 versa?

4 A. Yeah, and that happens frequently because
5 they either don't understand the questionnaire
6 questions, the questionnaire is not a well-written
7 questionnaire or you made assumptions about their
8 answers that weren't true, so yes.

9 Q. So you were talking about after you've looked
10 at the questionnaires then the individual jury
11 selection itself, how does the Colorado method apply?

12 A. Well, during the individual jury selection
13 method, after the Judge has done the initial voir
14 dire, explaining general concept of the law, after the
15 State has done their general questioning --

16 MR. NORMAN: I'm sorry, Your Honor, but
17 the State, just for the record, would object that if
18 the suggestion is that the Colorado method is the
19 method that should have been used, it exceeds the
20 scope of the writ. The State would object to that.

21 MR. GROSS: Well, the writ says the
22 venireman were not properly death qualified, Your
23 Honor, and I'm getting to the point where the Colorado
24 Method is the way to properly qualify the jury -- the
25 venires death qualified, and I'm getting to that, Your

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1 Honor.

2 MR. NORMAN: May I respond, Your Honor?

3 THE COURT: Yes, sir. You may.

4 MR. NORMAN: The writ, I believe,
5 narrowed that down to a specific -- well, specific
6 deficiency. They said that Mr. Jones didn't
7 adequately eliminate those jurors who would have voted
8 strictly for death based on the guilt-innocence phase,
9 that this was a murder with robbery.

10 And if the questioning is meant to elicit
11 testimony that he should have used a particular method
12 or additional questions, I mean, the nature of the
13 Colorado Method -- the State would just like it on
14 record, we would object, that would exceed the scope
15 of the writ.

16 MR. GROSS: It's not the way I read the
17 writ, Your Honor, and I'm the one that wrote it. It's
18 very clear what we're looking at here is given the
19 scant questioning by trial Defense Counsel, there's no
20 way they could have made a -- an intelligent decision
21 on whether or not these veniremen were death
22 qualified. Beginning at page 49 of the writ, Your
23 Honor, I mean, the case law that's covered on page 49
24 and 50 covers exactly what I'm getting at right now
25 with -- with Mr. Perkins.

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1 THE COURT: I agree. Objection is
2 overruled. Go ahead.

3 Q. (BY MR. GROSS) So we were talking about how
4 the Colorado method allows you to determine the
5 proclivities of the veniremen as to their attitude
6 towards the death penalty?

7 A. That's the design of it, yes.

8 Q. And could you please tell us -- and of
9 course, there's all kinds of way to do jury selection,
10 right?

11 A. Well, actually, I did overhear some of the
12 questioning. The Colorado method is the only method
13 that I'm aware of. I mean, there are as many
14 different styles of voir dire as there are probably
15 lawyers; but the Colorado method is the only one that
16 I'm familiar with that has a pattern of -- of
17 questions that you need to be asking in order to get
18 to the core question of the death penalty voir dire,
19 which is whether or not the individual venire person
20 can actually consider something other than the death
21 penalty.

22 Q. And how does that work?

23 A. Well, after all, the general --

24 Q. And by the way, the Colorado method has been
25 taught since approximately the last ten years, right?

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1 A. Yeah, I think '97 is when it first came into
2 vogue, but after the general questions by the Court,
3 after the general instructions and questions by the
4 State, and after the general filling-in-the-gap
5 questions by the Defense, then you go into what's
6 called the stripping question.

7 And the stripping question basically asks
8 the jury -- the juror to consider a hypothetical.
9 "You have been on this jury. You're on a hypothetical
10 capital case. You and the other members of the jury
11 panel have gotten all the evidence, you've gone back
12 to the jury room. You've considered all that
13 evidence. You've rejected any possible defenses.
14 It's not an accident. It wasn't self-defense. It
15 wasn't a mistake. It was this guy. He's guilty of
16 capital murder as charged in the indictment. Now,
17 with all that aside, how do you feel about imposing
18 the death penalty under these circumstances"?

19 And the whole point behind that stripping
20 question is to make sure that that individual venire
21 person is not clouding his answers to the questions
22 that you're asking him now with possible defensive
23 issues and things like that, which may say, "Well,
24 I'll keep an open mind. I'm going to keep an open
25 mind until I hear all the evidence and only then will

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1 I decide whether or not the death penalty should be
2 imposed or not."

3 Because the death penalty is not the
4 automatic default in the death penalty case, even
5 though it -- it sounds like it should be, but it's
6 not. The death penalty -- the way the statute is
7 written in Texas favors as a default position for the
8 jury to give life unless the two questions can be
9 answered in the way that they need to be answered in
10 order to impose the death penalty.

11 Q. The two special issues?

12 A. That's correct.

13 Q. And then after the initial stripping
14 question, then how does the Colorado method get you in
15 then two the special issues?

16 A. Well, first of all, after the stripping
17 question and after the juror has been allowed to voice
18 a clear position as to whether -- where he is on that
19 spectrum of one to seven, whether he's an automatic
20 death penalty guy or an automatic life person, then --
21 then you start pinning them down in order to exercise
22 appropriate, either a challenge for cause because they
23 are a more than excludable juror, or you're going to
24 try to rehabilitate them if they're -- if they fall
25 into the category of a No. 1 or a would excludable

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1 juror so that you can -- you can rehabilitate them and
2 potentially keep them on the juror -- jury as a valid
3 juror.

4 MR. GROSS: May I approach, Your Honor?

5 THE COURT: Yes, sir.

6 Q. (BY MR. GROSS) I would like you to read
7 yourself two pages out of the writ I filed. I also
8 had trial Defense Counsel, Mr. Garza, read them also,
9 and I provided them to you earlier, but I just want to
10 make sure you're familiar with them again. On Page 49
11 and 50 is just the law as regards to getting veniremen
12 death qualified, and I would like you just to read to
13 yourself pages 49 and 50, please.

14 A. (Complies.) Does it end on 50?

15 Q. It does, yes, sir.

16 A. Okay.

17 Q. Now, Mr. Jones -- Mr. Garza, first chair
18 counsel in this case, trial Counsel, he agreed with
19 the law as cited on those two pages that that
20 accurately states the law in the nation as far as
21 qualifying venireman death qualified, and I asked him
22 to look, as just an example, at the first venireman
23 who was selected in this case, I believe it was
24 Gilbert, and -- and he read at a break the -- the jury
25 selection that was conducted by Mr. Jones of the first

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1 venireman.

2 And then when Mr. Garza came back in, he
3 agreed that reading the transcript of the Defense's
4 questioning and State's questioning of that first
5 venireman, that they did not have a good idea as to
6 whether or not that venireman was death qualified.
7 Now, I asked you to do the same thing; correct?

8 A. That's correct.

9 Q. And, in fact, I sent you the individual jury
10 selection of all the veniremen selected in the case,
11 correct?

12 A. That's correct.

13 Q. And I sent you the sections of my writ and
14 the portions of the juror questionnaires that pertain
15 to that, so that you could review it as a summary
16 witness for today, correct?

17 A. That is correct.

18 Q. Now, after reviewing --

19 MR. GROSS: May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 Q. (BY MR. GROSS) After reviewing all the
22 transcripts that I sent you on jury selection and
23 looking at these two pages on the law of making
24 veniremen death qualified in Texas and in the nation,
25 did you arrive at a conclusion as to whether or not

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1 the veniremen that I listed on -- on iii on the table
2 of contents, page iii, did you arrive at a conclusion
3 as to whether or not those veniremen were death
4 qualified or not in this case?

5 A. They were not death qualified according to
6 the Colorado method. It was difficult to determine
7 where their -- their views actually would have landed.

8 Q. And according to go the case law on pages 49
9 and 50 in the writ, specifically where the Supreme
10 Court in *Morgan v. Illinois* warns about general
11 questions and general answers, correct?

12 A. Right. And that's the biggest danger area
13 because when you ask a juror any -- any normal
14 reasonable person says they can be fair and impartial
15 and things like that. It's rare that you get an
16 answer from somebody like that that they cannot be. I
17 mean, the automatic conclusion most people want to
18 have about themselves is that they are fair and
19 impartial, and that's not -- that's not the issue in a
20 death penalty case. And so, asking that question is
21 not asking the right question.

22 Q. And what is the right question to ask?

23 A. The right question is whether or not you can
24 consider the -- the two -- the mitigation issue and
25 you can consider the future dangerousness issue in the

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1 appropriate circumstances.

2 Q. In the stripping questions that you talked
3 about earlier?

4 A. Correct.

5 Q. Now, when you read the testimony of
6 veniremens (sic) Gilbert, Castaneda, Benavidez,
7 Johnston, Baucom, Bowman, Light, Foutch, Lyles, Leal
8 and Vermace, what was your opinion about whether or
9 not you knew if they were death qualified or not?

10 A. There was not -- there was no way to grade
11 their death qualification on a one to seven scale,
12 particularly since some of them had come in just a
13 preliminary grading, some of them in their jury
14 questionnaires were sevens.

15 Q. Which is death?

16 A. Yeah, they were automatic death. They
17 were -- they were -- you know, if it was a homicide,
18 they were eye-for-an-eye type of personalities. So
19 those persons clearly deserve far greater scrutiny. I
20 don't remember exactly off the top of my head because
21 it's been a couple of weeks since I reviewed those,
22 but three or four at least out of the 12 were sevens,
23 and nothing done to --

24 Q. To delve into that?

25 A. Well, not so much delve into it, but to

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1 eliminate that as a -- it was never delved.

2 Q. Were you alarmed at the lack of questioning
3 of these veniremen by the Defense as regards to
4 whether or not they were death qualified?

5 A. Most of the questioning I read was fairly
6 routine questioning. It was typical of voir dire
7 questioning. It was not real specific to a death
8 penalty case.

9 Q. And when you say "typical questioning," you
10 mean in a nondeath case?

11 A. You know, "These are the principles of law,
12 you know. You have to find him guilty beyond a
13 reasonable doubt. You'll be getting some special
14 issues. Can you consider mitigating evidence"? None
15 of the specific questions that you would ask such as,
16 you know, "We understand you'll consider mitigating
17 evidence, but will you give true weight to it? Will
18 you give it due consideration," not just a passing
19 consideration, which is the traditional way.

20 Q. Were you alarmed or not at the lack of
21 information the obtained in their questioning of these
22 veniremen?

23 A. I don't know if alarmed is the right word,
24 but certainly I noticed that the questions that needed
25 to be asked weren't being asked.

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1 Q. Cause you concern?

2 A. Sure.

3 Q. Were you surprised?

4 A. Yeah, actually, I was. Grant and Mr. Jones
5 and Mr. Garza are -- are very good attorneys. I
6 consider them mentors. I consult with them frequently
7 in cases. Grant is actually representing the death
8 penalty client that I had a couple of years ago on his
9 appeal, so sure.

10 Q. So you were surprised at the deficiency, if
11 you will, of the questioning on these veniremen by
12 these people then?

13 A. Yes, sir.

14 Q. By these attorney.

15 Now, I also asked you to look at -- you
16 know, we talked a little bit earlier about the need
17 for a mitigation expert and a psychologist and an
18 investigator at minimum in a case, correct?

19 A. That's correct.

20 Q. And you've looked -- you've reviewed the --
21 the vouchers that were submitted by both attorneys in
22 Defendant's Exhibit 4, correct?

23 A. Briefly.

24 Q. And you've also been made aware that in
25 evidence are Defendant's Exhibits 6, 7, 8 and 9, which

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1 are mitigation articles out of Mr. Garza's file,
2 correct?

3 A. Briefly, yes.

4 MR. GROSS: May I approach, Your Honor?

5 THE COURT: Yes, sir.

6 Q. (BY MR. GROSS) How important is it, do you
7 believe, that the mitigation investigation begin as
8 early as possible on a case?

9 A. Mitigation in a -- in a clear-cut death
10 penalty case where guilt-innocence isn't really a huge
11 issue when you're really -- you're driving toward the
12 punishment phase of the trial, focuses the entire
13 investigation that Defense Counsel needs to be
14 involved in. So without mitigation taking place at
15 least as a corollary to what you're doing regarding
16 preparing for the defense of the case, you -- you've
17 only completed half the job, and in some cases, not
18 even half the job.

19 Q. And an early beginning of a mitigation
20 investigation in a case, how does that help with
21 regards to attorney-client relations, the trust
22 factor?

23 A. Well, first of all, it demonstrates to the
24 client that no stone is being left unturned, and it
25 also helps the Defense Counsel because a portion of

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1 the case which is weighing on everybody's mind is
2 being dealt with by a professional at the same time
3 you're doing other work, so it helps with the stress
4 factor, with both the attorney's and client's, so the
5 client understands that he's being not just
6 adequately, built vigorously defended.

7 Q. Now, in Defendant's Exhibit 6 that's in
8 evidence, it's an article out of Mr. Garza's file
9 dated April 1999 entitled *Capital Cases* by Russell
10 Stetler. And in that article that I highlighted just
11 so no one has to look through too many pages, but it's
12 on page 3 of that article, it states that "Most
13 capital defense practitioners now recognize --" and,
14 of course, this is in 1999 "-- now recognize that it
15 is disastrous to wait until the eve of trial to
16 consult a mental health expert," or begin the
17 mitigation investigation. Do you agree with that?

18 A. It would be calamitous because if you just
19 had your mentally health expert on the eve of trial
20 and things suddenly arrive that needed to be dealt
21 with, it's too late.

22 Q. Now in this case, Dr. Martinez acted as both
23 the forensic psychologist and the mitigation expert,
24 which of course you testified to earlier, the
25 standards in Texas have both -- have that separated

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1 out as a mitigation expert and a psychologist; is that
2 correct?

3 A. That's correct.

4 Q. Now, I showed you earlier Dr. Martinez's --
5 on Defendant's Exhibit 10 is a summary of -- and
6 Dr. Martinez testified in this case, in this writ
7 hearing, and confirmed that everything on here is an
8 accurate summary of the time he spent in the case.
9 And knowing that jury selection began on October 23rd,
10 the first interviewing that was done of any mitigation
11 witnesses, it's undisputed in this case, didn't begin
12 until after jury selection began which was October
13 22nd of 2008. Now, is that consistent or inconsistent
14 with Defendant's Exhibit 6 that was an article in
15 Mr. Garza's file in this case?

16 A. Well, this article talks about mental health
17 experts. This is actually going to -- to mitigation.
18 I'm not sure really whether this was referring to
19 mental health expert for the Defendant himself or for
20 outside witnesses, but what I can see here is he says
21 he interviewed John Henry back in July, but doesn't
22 begin what appears to be mitigation investigation
23 until after the trial has begun, which of course, is
24 rather hard to believe.

25 Q. That's alarming, right?

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1 A. Well, I -- I can't see of any -- any use that
2 it would be after that point.

3 Q. Because don't you use the mitigation expert's
4 findings and the mental health expert's findings to
5 help determine a juror profile in a case?

6 A. Well, you'd certainly use that as part of it.

7 Q. And you want to be able to ask veniremen
8 about their thoughts on certain areas in general that
9 you think will come up in mitigation, right?

10 A. Sure. At least generally, you would want to
11 be able to talk, you know, "Would you consider
12 somebody's -- the fact that he was an abused child as
13 a -- or had -- you know, was homeless, or things like
14 that," to help focus your questioning of the
15 veniremen.

16 Q. And also going along with Defense Exhibit 6
17 regarding mental health experts, it's undisputed in
18 this case that Dr. Martinez only administered one test
19 that was for approximately 30 minutes long that was
20 deemed invalid. How does that -- is that consistent
21 or inconsistent with Mr. Garza's articles in his file,
22 particularly Defendant's Exhibit 6, with getting the
23 mental health expert done as far in advance of trial
24 as possible?

25 A. Obviously, it's inconsistent.

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1 Q. Now, coupling what we just talked about with
2 Defendant's Exhibit 8, which is another article from
3 Mr. Garza's file from July 25th -- I'm sorry, from
4 July 2005, entitled *Mitigation in the Death*
5 *Belt Twelve Steps to Saving Clients' Lives*, it talks
6 about under step five what happens when a client
7 refuses to cooperate any longer regarding mitigation,
8 correct?

9 A. That's correct.

10 Q. And this article, what does it basically say
11 if a client refuses to cooperate? It basically says
12 that you should go forward regardless, correct?

13 A. Doesn't matter.

14 Q. Right?

15 A. That's right.

16 Q. And by "doesn't matter," what do you mean by
17 that?

18 A. The client, first of all, is not only a legal
19 expert; otherwise, he wouldn't be in the trouble that
20 he's in. Number two, under the stress of the death
21 penalty case, the client's opinions about how the
22 legal Defense team should coordinate its activities
23 are, as far as I'm concerned, irrelevant. They can
24 certainly contribute. We need information from the
25 client. They need to give us their cooperation, but

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1 they dcn't drive the bus.

2 Q. And what about a case where you have a client
3 like Jchn Henry Ramirez was at the time who was
4 clinically depressed, severely clinically depressed,
5 suicidal, and had been administered only one
6 psychological test for 30 minutes the night before
7 they -- the night they made the decision not -- to
8 forego mitigation testimony, what's your opinion on a
9 defense attorney at that point? Should they go ahead
10 and present their mitigation case or not?

11 A. You absolutely have to.

12 Q. And why is that?

13 A. Because the client's mental condition is not
14 such that you can rely on him, you know, assuming the
15 client is still competent as that definition pertains,
16 you know, if he's still able to participate in his own
17 defense and contribute meaningfully to his own
18 defense. It's the attorney's duty to defend his life
19 even if he's not interested in doing so.

20 Q. Now, Defense Counsel then decided not to
21 present mitigating evidence like in this case with a
22 psychologically disturbed client. Do you think that's
23 deficient performance?

24 A. Absolutely.

25 Q. And the -- the lack of death qualifying

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1 questions that you saw for the veniremen we spoke
2 about earlier, did you view that as deficit
3 performance?

4 A. I did.

5 Q. And would you agree that those two coupled
6 together would cause you to not have confidence in the
7 verdict in that case?

8 A. There's no other conclusion you can draw
9 other than that the death penalty was tainted by the
10 lack of questioning and qualification of that jury.

11 MR. GROSS: Thank you, sir. No further
12 questions, Your Honor.

13 THE COURT: Cross?

14 MR. SKURKA: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. SKURKA:

17 Q. Hi, Mr. Perkins. My name is Mark Skurka. I
18 have a few questions to ask you about this case.

19 A. We've met.

20 Q. We'll just start with the final conclusion.
21 That is your opinion that you think because of these
22 deficiencies that you say that's the only conclusion
23 you can reach that it was tainted. That's what you
24 just said, correct?

25 A. Just yes or no, then it's yes.

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1 Q. Okay. Isn't it a fact, though, that you
2 really can't look into the minds of the jury and see
3 what they decided on, and why they decided, correct?

4 A. No, but you can't on any jury. That's
5 exactly right.

6 Q. That's right. So your opinion is something
7 you think as a person who did not hear the testimony,
8 correct?

9 A. It's --

10 Q. You did not hear the testimony of the whole
11 trial like the jury did?

12 A. No, I did not. You're correct.

13 Q. You did not hear the testimony done at the
14 guilt or innocence phase, correct --

15 A. Correct.

16 Q. -- at all? You did not hear the testimony or
17 every one of the -- every bit of the jury selection
18 that took place in this case, just selected excerpts
19 that Defense Counsel provided you, correct?

20 A. Correct.

21 Q. And you weren't there actually in the
22 courtroom sitting next to Mr. John Henry Ramirez as
23 Mr. Jones and Mr. Garza were, correct?

24 A. Correct.

25 Q. Either at the very beginning of the trial or

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1 that very last day of the trial?

2 A. Never.

3 Q. Okay. So, again, you are making an opinion
4 based on things that you've been provided by the
5 Defense without having the entire scope of the trial
6 and its recordings available to you, correct?

7 A. I was given the information based on the
8 scope of what I was to testify about, that's right.

9 Q. But it's fair to say, you don't know
10 everything that happened in this court?

11 A. Okay. No question.

12 Q. And you're only basing it on what was
13 provided you by Defense Counsel?

14 A. That's correct.

15 Q. Now, you also mentioned something about --
16 there's a lot to go over and let's just go back to the
17 beginning, okay?

18 A. Sure.

19 Q. We're going to go back to the Colorado method
20 that you first were called to testify to. When did
21 you first start hearing about the Colorado method?

22 A. That's tough to say. Probably five or six
23 years.

24 Q. Five or six years ago? And wouldn't it be
25 fair to say -- and I know I came in a little bit late.

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1 You've only actually done one capital murder case; is
2 that right?

3 A. One death penalty case.

4 Q. One death penalty case. Was that in this
5 county or another county?

6 A. Here.

7 Q. In Nueces County? When was that?

8 A. Carlos Lopez in 19 -- I'm sorry, 2005.

9 Q. Carlos Lopez. Is he the one that killed the
10 two ladies at the hospital?

11 A. Uh-huh.

12 Q. Okay. And were you first chair on that?

13 A. I'm sorry, I'm sorry. Carlos Lopez and
14 Charles Orr, two years ago.

15 Q. Charles Orr was more resent than Carlos
16 Lopez, right?

17 A. Yeah, two years ago, 2009.

18 Q. I'm sorry?

19 A. 2009.

20 Q. 2009. And did the State seek the death
21 penalty in both those cases?

22 A. Yes.

23 Q. And were you first chair or second chair on
24 those cases?

25 A. Second chair in both.

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1 Q. Second chair, okay. So the record should
2 reflect that you've actually never been a lead
3 attorney in a death penalty case?

4 A. That's correct.

5 Q. That's correct. And are you familiar with
6 Mr. Jones and Mr. Garza's amount of times they've been
7 first chair in those case -- type cases?

8 A. Absolutely. Extensively.

9 Q. Extensively, right?

10 A. Uh-huh.

11 Q. Would it be fair to say much more extensive
12 than your experience?

13 A. Much more extensive.

14 Q. In fact, I bet you could probably not argue
15 with me if I said they've each done probably more than
16 ten or so death penalty cases. Wouldn't you agree
17 with that?

18 A. Far more than ten.

19 Q. Far more than ten cases. So if we're looking
20 at people that's actually been experienced in death
21 penalty cases, prosecuting them and actually defending
22 them, correct?

23 Let me rephrase the question. In fact,
24 Mr. Jones used to be the district attorney, correct?

25 A. Correct.

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1 Q. For, I don't know, about 15 years or 12 years
2 or something like that?

3 A. I have no idea. I mean, it was a long time.
4 He was D.A. when I first started here, so --

5 Q. But it was fair to say it was a long time,
6 like probably more than 10 years, correct?

7 A. And Mr. Garza as well.

8 Q. And Mr. Garza was his first assistant
9 district attorney for about the same a time or a
10 similar time, around 10 years?

11 A. I don't know.

12 Q. I don't know the exact dates either, so we're
13 together on that. So -- and as prosecutors, both
14 Mr. Jones and Mr. Garza prosecuted people for the
15 death penalty and -- a number of times, correct?

16 A. As far as I know, yes.

17 Q. And once they became -- got out of the
18 prosecution business and went to the Defense side,
19 they probably, would you agree with me, that they
20 probably defended about an equal number of death
21 penalty cases?

22 A. I really wouldn't have anyway, but I'm
23 comfortable with that.

24 Q. Okay. And I don't know the exact numbers
25 either, but it's fair to say they have extensive

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1 history in both prosecuting and defending capital
2 murder cases, correct?

3 A. Correct.

4 Q. And not to be -- you know, just to point out
5 that -- that it's far more than you, correct?

6 A. No question about it.

7 Q. And have you ever taught on the Colorado
8 method?

9 A. No.

10 Q. How many seminars have you gone to about the
11 Colorado method?

12 A. I go to two every year, so -- and Colorado
13 method is usually taught as a portion of those capital
14 murder seminars, so more than -- more than a few
15 times.

16 Q. Okay. So you've never been to a seminar
17 that's only on the Colorado method, correct?

18 A. Yes.

19 Q. You have been?

20 A. Yes.

21 Q. And where was that?

22 A. Austin.

23 Q. When?

24 A. A couple of years ago, probably last spring.

25 Q. So this is 2011, so probably 2009?

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1 A. No. It would have been 2010, but there were
2 times in 2009 as well.

3 Q. And -- well, of course, this case was tried
4 in 2008, correct?

5 A. I believe so.

6 Q. Okay. So when you started going to these
7 seminars, it was even after this trial began, correct,
8 2008?

9 A. That's correct.

10 Q. Okay. How many people -- I'm sorry. Do you
11 have any kind of -- when you talked about the Colorado
12 method, is that something that is done throughout
13 Texas in your information?

14 A. From the people I have contacted with the
15 death penalty qualified lawyers who attend these are
16 from all over the State, everybody to the best of
17 their ability employs the Colorado method.

18 Q. How many times have you seen it employed in
19 Nueces County?

20 A. I think Mr. Gonzales and I employed it for
21 the first time that we're aware of here in Nueces
22 County during the Charles Orr trial.

23 Q. That would have been two years ago?

24 A. 2009.

25 Q. Okay. So after all this time in Nueces

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1 County, really it's only been used one time?

2 A. To my knowledge. I mean, obviously, there's
3 not going to be any documentation --

4 Q. Sure.

5 A. -- as to whether or not a particular -- you
6 would have to check the transcripts of every death
7 penalty trial that's been conducted here to find out
8 whether or not those attorneys were employing the
9 Colorado method.

10 Q. Well, as the prosecutor who's tried most of
11 the capital murder cases in the last 25 years,
12 would it be surprising to know that I've never seen
13 anybody use it like that?

14 MR. GROSS: Objection, Counsel is
15 testifying.

16 THE COURT: Sustained. You can't
17 testify.

18 MR. SKURKA: I understand.

19 Q. (BY MR. SKURKA) Would it -- are you aware
20 besides the time you and Mr. Gonzales did it of any
21 other specific cases where lawyers used that in town?

22 A. I'm not aware.

23 Q. Okay. So you, of course, are testifying that
24 these gentlemen, Mr. Garza and Mr. Jones, should have
25 used this -- this procedure about a procedure you

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1 didn't even start learning about until 2009?

2 MR. GROSS: I object to that, Your Honor.
3 He says that he's learned about it before then, and he
4 said it's been around since the '90s. That's
5 mischaracterizing his testimony.

6 THE COURT: He can ask the question.

7 MR. SKURKA: I'll just go onto something
8 else, Judge.

9 THE COURT: Okay.

10 Q. (BY MR. SKURKA) What date or what case has
11 the Colorado method become this so-called standard
12 in -- in Texas?

13 A. Oh, I don't think it's become the standard,
14 and that's unfortunate because it's a fairly effective
15 method.

16 Q. Okay. And let's talk about that for a
17 minute. You agree with me that there is no standard
18 in Texas of using the Colorado method for seating
19 jurors in capital murder cases?

20 A. Absolutely no standard.

21 Q. So the fact that Mr. Jones and Mr. Garza may
22 have not used this doesn't violate any standard that's
23 known in Texas, does it?

24 A. No. I mean, it doesn't violate a particular
25 standard.

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1 Q. It doesn't violate any kind of ethical
2 standard of what you have to do?

3 A. I -- I wouldn't be inclined to go that far.
4 I mean, if you're aware of a procedure that is better
5 than another procedure and you don't have a real good
6 explanation of why you're not using it, it's -- you
7 know, you've got general concepts of Sixth Amendment
8 right to counsel and there's plenty of Supreme Court
9 cases that talks about what you got to do in order to
10 sustain that very high obligation to your client.

11 Q. What disciplinary rule are you quoting there?

12 A. No disciplinary rule.

13 Q. No ethical rule?

14 A. No.

15 Q. Okay. In fact --

16 A. Sixth Amendment.

17 Q. Say again?

18 A. Sixth Amendment to the Constitution.

19 Q. Sixth Amendment. I understand, but we're
20 talking about the Colorado method, and we're talking
21 about the lack of using it does not violate any
22 ethical or gold standard in Texas, does it?

23 A. But I think you're missing the point. It's
24 that it's not necessarily the method itself, it's what
25 the method derives to get as information from the

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1 jurors that's not being obtained through the
2 traditional questioning of a jury by asking the
3 questions such as "Can you be fair and impartial, can
4 you consider mitigating evidence, can you consider the
5 issue of future dangerousness"?

6 Q. Are you saying that those lawyers who never
7 used it in any one of those veniremen at all during
8 the testimony and during the -- during of the jury
9 selection phase of this trial, never used those words?

10 A. No, they asked those questions.

11 Q. Of course, they did.

12 A. They asked those questions.

13 Q. They asked those questions and the fact that
14 they didn't ask them in a structured way, perhaps as
15 the Colorado method suggests, doesn't mean they
16 weren't arriving at those conclusions, does it?

17 A. It -- it's much more difficult to get around
18 implanted and difficult to derive personally held
19 beliefs without the stripping question because it's --
20 it's --

21 Q. Unless you have maybe 30 years experience --

22 MR. GROSS: Object to Counsel
23 interrupting the witness's answer.

24 THE COURT: Sustained. Mary is going to
25 get mad at us.

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1 Q. (BY MR. SKURKA) Go ahead and finish?

2 A. The stripping question is very important of
3 the Colorado method because it makes sure that the
4 attorney and the potential venireperson are dealing
5 with each other on an apples to apples, rather than
6 apples to oranges basis. The venireperson has to
7 understand that you're talking about somebody that
8 they have convicted beyond a reasonable doubt of
9 capital murder without the veneer of any defenses,
10 mistakes, accidents or other justifications clouding
11 the issue; and that's the whole point behind the
12 stripping question is to make sure you're dealing
13 apples to apples with the jury -- with
14 the venireperson.

15 Q. And I understand you're quoting the
16 platitudes of --

17 A. No, no, no., I'm not quoting platitudes.

18 Q. -- of the Colorado method?

19 A. No, these aren't platitudes, Mark. These are
20 really important considerations because without
21 getting to go that core that you know that you're
22 dealing with the jury -- the juror on the -- the basic
23 core belief of death penalty, whether or not they can
24 consider mitigation and they can properly consider the
25 question of future dangerousness, you're not asking

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1 the right questions.

2 Q. But that's just your opinion that they didn't
3 ask the right questions. Those gentlemen, would you
4 agree with me, with all their combined 60 or more
5 years of experience were sitting at counsel table,
6 could see the witness or the potential juror on the
7 stand, could figure out based on their experience and
8 what answers they're getting from the person on the
9 stand, and from their demeanor and how they appeared
10 that they could make those decisions without these --
11 these questions set up by the Colorado method?

12 A. And then taking that, I guess, to it's --
13 it's obvious conclusion that an attorney with enough
14 experience wouldn't need to ask any questions
15 whatsoever and could just look at somebody and decide
16 whether or not they're --

17 Q. But that's not my question, Mr. Perkins.

18 A. It --

19 Q. That's -- that's absurd. I didn't ask that.
20 I said, "Based on their experience and training,
21 wouldn't you agree with me that they could come up
22 with a set of questions based on their experience and
23 training that didn't necessarily have to rely on the
24 Colorado method"?

25 A. No, Mark, because it doesn't depend on your

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1 experience and training. It depends on your ability
2 to get jurors to answer the questions honestly and
3 deal with the issues. It doesn't matter how much
4 training you get, individuals are individuals. You
5 got to ask them the appropriate questions or you're
6 not going to get the right answers.

7 Q. But you agreed with me a little while ago
8 that they did ask some of those appropriate questions.

9 A. No, I told you they asked the traditional
10 questions, "Can you be fair --"

11 Q. No --

12 A. "-- can you be impartial, will you consider
13 mitigating evidence"? That's not enough.

14 Q. Well, those weren't the questions I was
15 referring to in your prior testimony, but have you
16 seen other attorneys that may be just as experienced
17 as Mr. Jones or Mr. Garza use the Colorado method or
18 not -- or use their own method?

19 A. Again, you know, I'm not familiar with
20 another method per se.

21 Q. Well --

22 A. We have our techniques. We use our
23 individual experience, you know, the same things
24 you've built up over your many years of experience.
25 You would incorporate that in, but I would expect -- I

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1 would expect that you would adapt your -- your
2 techniques to the individual circumstances of the
3 case, and that's what the Colorado method requires.
4 It imposes an obligation on the attorney to ask the
5 appropriate questions to fit jurors into this scale of
6 one to seven as a way of getting a good snapshot of
7 what -- whether you're dealing with an automatic death
8 penalty or an automatic life person, so you can make
9 educated decisions about executing peremptory
10 challenges because that's the eat whole point behind
11 the voir dire process is to get enough information so
12 that you can intelligently exercise peremptory
13 strikes.

14 Q. So are you tell -- is it your testimony that
15 Mr. Jones and Mr. Garza did not intelligently use
16 their experience, their training, the seminars they've
17 been into, the methods they've acquired in trying many
18 more capital murder cases than you to employ their way
19 of rating or finding out which jurors would be the
20 best for the Defense?

21 A. Oh, there's no question they did that.

22 Q. All right. And you don't have to rely on
23 that. Other lawyers such as Doug Tinker, Rick Rogers,
24 other people who tried many capital murder cases, they
25 could rely on their own style or their own methodology

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1 and not even use the Colorado method or use parts of
2 it; isn't that true.

3 A. Yeah. Again, there is no ethical
4 consideration that requires any attorney in the State
5 of Texas to use the Colorado method.

6 Q. Thank you. And there is no guarantee using
7 the Colorado method; isn't that true? You can't tell
8 this Court or this record -- tell this record -- tell
9 this Appeals Court that if, in fact, Mr. Jones and
10 Mr. Garza had used the Colorado method, the verdict
11 would have been different; he would have got a life
12 sentence. You can't tell the judge that, can you?

13 A. No, I can't I can tell the Judge that.

14 Q. Of course not.

15 A. I can tell the judge this, that since
16 the Colorado method --

17 Q. You have to wait until I ask you a question
18 before you can tell Judge this. I know what you're
19 going to say -- well, never mind. I won't get into
20 that.

21 A. Okay.

22 Q. You talked about -- hold on just a second.
23 Let me see the next part I want to go to. Going back
24 to being in the courtroom, you would agree, would you
25 not, that the sworn testimony -- and, of course, the

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1 jurors are up there, the potential jurors are up
2 there. They're sworn to tell the truth and to give
3 true answers to the questions propounded to them. You
4 can't tell the Court here that these jurors lied to
5 Mr. Garza or Mr. Jones when they were asking them
6 questions, correct?

7 A. I was never asked to evaluate whether they
8 told the truth or not.

9 Q. Well, the reason I'm saying is that you said
10 that these lawyers have to ask these stripping
11 questioning in order to get at the truth?

12 A. The stripping question --

13 Q. Well --

14 A. -- and --

15 Q. But let me --

16 COURT REPORTER: I can't get both.

17 THE WITNESS: Sorry.

18 Q. (BY MR. SKURKA) Let me finish my question.
19 You can't tell whether or not the jury did not
20 respond or reply truthfully to Mr. Jones's questions
21 or Mr. Garza's questions without having the stripping
22 question answered -- asked them, correct?

23 A. The stripping question does not go to whether
24 or not they're testifying truthfully or not. It goes
25 to the issue of whether or not they fully understand

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1 the issue and what is being asked of them in -- in a
2 capital murder trial death penalty case.

3 Q. And I understand that, but if you don't ask
4 the stripping question, you can still get an idea if a
5 person understands a legal concept, can't you?

6 A. It's not so much whether or not they
7 understand the legal concept, it's whether or not you
8 are dealing with them on -- again, on an apples to
9 apples, rather than apples to oranges basis. You got
10 to get the potential venireperson past the point of
11 considering defenses or justifications or other things
12 like that. You got to make sure that they understand
13 you're talking about a jury that has convicted a
14 person of the charge of capital murder. Only then can
15 you be asking them intelligent questions about whether
16 or not they could consider or not consider the death
17 penalty. That's all.

18 Q. But I am not asking this question about the
19 stripping question. I'm asking you how do you know
20 that through their sworn testimony and the demeanor of
21 their response and how they acted that Mr. Garza and
22 Mr. Jones sitting over there that wasn't sufficient
23 enough to show they could give honest answers and
24 understood the questions?

25 A. Because you cannot confirm that they are not

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1 laying that veneer of justification of self-defense or
2 other possible defenses, such as lack of I.D., any of
3 those things that might prevent a verdict on
4 guilt-innocence as opposed to punishment. That's the
5 point.

6 Q. Well, you are aware, are you not that the
7 stripping question -- that your stripping question may
8 not add specific facts of the case without becoming an
9 improper commitment question?

10 A. Absolutely, absolutely.

11 Q. It could become an improper commitment
12 question?

13 A. You don't make the stripping questions case
14 specific. It doesn't have to be.

15 Q. Okay. And that would make a commitment
16 question, correct --

17 A. Sure.

18 Q. -- if it did that? Without the specific
19 facts of this case, your stripping question really
20 doesn't go any further than the questions asked --
21 that were already asked in the case, does it?

22 A. No, it does because, again, it goes to the
23 point of making sure that the juror is not confusing
24 the issue with guilt-innocence points, such as
25 defensive issues, justification, improper I.D.,

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1 whether or not the person is guilty or not guilty.
2 You're getting them to strip that away, that's the
3 whole point for the question. We are at the
4 conclusion of the trial. You have found the Defendant
5 guilty beyond a reasonable doubt of capital murder.
6 "There. Are no longer any questions in your mind,
7 Mr. Venireperson, that the Defendant is guilty. Now,
8 let's talk about the death penalty."

9 Q. But, of course, doesn't that beg the
10 question -- you keep saying this question, like, make
11 sure that it is and it guarantees and make sure
12 that -- but isn't it a fact that lawyers can make
13 sure -- or sure of what witnesses are -- or potential
14 jurors are saying by the fact that their responses,
15 their demeanor, and their attitude toward the juror --
16 to the lawyer? They can do that, can't they?

17 A. Okay. You know, we don't drive around in
18 horses and buggies anymore, but you can.

19 Q. I know, but what you're -- I know, but you're
20 arguing that they're not adopting modern methods;
21 correct? That's essentially what you're saying.

22 A. It's not so much a modern method, it's a
23 particularly effective method. It's so effective that
24 the State of Colorado moved away from jury punishment
25 on capital murder cases because of the Colorado

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1 method.

2 Q. But we are not here to argue about the
3 validity of the Colorado method and what Colorado did.

4 A. It's got nothing --

5 Q. We're talking about Texas law. Texas law
6 does not require it, does it?

7 A. It's got nothing to do with validity, Mark.
8 It's got to do with effectiveness.

9 Q. Well, the question on effectiveness is
10 something that somebody else would have to agree, but
11 you've already told us that many lawyers are effective
12 without using the Colorado method; correct?

13 A. Yes.

14 Q. And isn't it a fact that many of the lawyers
15 across this State obtain life sentences on capital
16 murder cases without utilizing the Colorado method?

17 A. I'm assuming it's happened because not
18 everybody gets convicted of capital murder; you're
19 correct.

20 Q. Okay.

21 THE COURT: Anything else?

22 MR. SKURKA: If I can have just a moment,
23 Your Honor?

24 THE COURT: Okay.

25 Q. (BY MR. SKURKA) Switching a little bit now to

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1 the mitigation part that you were talking about.

2 A. Uh-huh.

3 Q. You said the area about mitigation is very
4 important, to start that early and getting that worked
5 on early on. And it is true, though, through the
6 records that Mr. Gross showed was that Dr. Martinez
7 was hired early and spoke to Mr. -- Mr. Ramirez like
8 in July or something, way before the trial; correct?

9 A. Well, I don't know about way before the
10 trial. I don't know how early on the case was
11 indicted but, I mean, mathematically, it was three
12 months before the trial.

13 Q. Okay. And is there any magic number or days
14 or months that a mitigation expert has to be in touch
15 with a client to make it, you know, acceptable or
16 nonacceptable?

17 A. No.

18 Q. So you're not saying that just because he
19 started in August and maybe the trial selection -- the
20 jury selection started in October 23rd, that's not per
21 se too late or last minute; is it?

22 A. No.

23 Q. The question -- I guess, going to the crux of
24 the matter was whether -- when he interviewed these
25 mitigation witnesses. I think that was the point you

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1 were trying to make, that he should have interviewed
2 them earlier; correct?

3 A. He started interviewing them after the trial
4 began.

5 Q. I know. And your point was he should have
6 started earlier?

7 A. Yeah. He should have started probably before
8 the trial began.

9 Q. And I understand that. And wouldn't it be
10 fair to say, though, if he had already received the
11 information from his client, Mr. Ramirez had
12 identified who were -- the possible mitigating
13 witnesses were, he had probably a pretty good idea of
14 what these witnesses were going to say anyway before
15 he did a formal interview with them? Wouldn't that be
16 fair to say?

17 A. No. No, that would not be fair to say.

18 Q. So the client wouldn't tell him -- well, when
19 he asked the client, "Who would be a good mitigating
20 witness for me to call," and he would say, "Well, my
21 grandmother because she raised me and she knows the
22 trouble I went through," and -- blah, blah, blah, and
23 told him all this stuff. You're saying that would be
24 valueless to Dr. Martinez before he could even talk to
25 the grandmother?

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1 A. I think the value would be limited to in
2 identifying who a potential mitigating witness would
3 be, but even then, if you're only going to rely on
4 your client to provide you evidence of mitigation,
5 you're missing the point.

6 Q. But I didn't say he was relying on his
7 client. What I said was his client provided that
8 information to him at a time, and it was easy enough
9 for him to follow up, whether it was a week before the
10 trial, during the trial, or five months before the
11 trial.

12 A. I'm going to take the position right here and
13 now that mitigating -- interviewing mitigating
14 witnesses after the trial has begun is probably per se
15 deficient behavior.

16 Q. Well, the question he's talking about is
17 interviewing them. My question is, isn't it a fact --
18 a fact that you have to identify those people first
19 before you can go interview them; correct?

20 A. At a minimum, sure.

21 Q. Sure. So the more important thing is what
22 mitigating factors can you identify and find and stuff
23 before you actually interview the person. And he had
24 those, didn't he?

25 A. It's difficult to tell from Dr. Martinez's

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1 billing that anything other than he interviewed
2 Mr. Ramirez on July 16th. That's all I can derive
3 from that.

4 Q. But if he had gotten that information from
5 Mr. Ramirez on July 14th or whatever date it was, he
6 would have that information available to him; correct?

7 A. I can't tell from his billing whether or not
8 that happened and if he did anything with it prior to
9 the trial commencing.

10 Q. Okay. The fact of the matter is you're
11 talking about the mitigation part. He should have
12 interviewed those people earlier, and you agreed with
13 that; correct? That doesn't necessarily mean the
14 verdict would change if he had interviewed them two
15 months before the trial, would it?

16 A. No.

17 Q. You can't tell the -- the Court that -- that
18 because he interviewed them a week before or a month
19 before, two months before, that would change the
20 verdict; correct?

21 A. No, I can't tell anybody that.

22 Q. The bottom line is before that evidence was
23 presented to the jury, there was some interviews made
24 for the mitigation; correct?

25 A. I -- I can't tell from the billing that

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1 Dr. Martinez provided whether anything took place
2 other than him interviewing Mr. Ramirez.

3 Q. But if there was testimony from other
4 witnesses, you wouldn't dispute that, that there was
5 mitigation work done ahead of time?

6 A. No, sir.

7 Q. The last part I want to talk about is the --
8 the talking about whether -- who gets to make the
9 decision to go forward on the punishment phase of the
10 trial, and that's the last area I would like to cover
11 with you.

12 Are you aware that if the client is
13 deemed to be competent to be tried, he can also be --
14 that could also be interpreted that he is competent to
15 instruct his attorney what to do and help prepare his
16 defense or present his defense?

17 A. A client doesn't help prepare a defense by
18 telling his attorney not to present helpful evidence.

19 Q. The point is, if he's competent, he is
20 competent to make all decisions related to the defense
21 of his case by the virtue of him being competent;
22 isn't that true?

23 A. I disagree. I disagree.

24 Q. Well -- okay. Let's go with the law then.
25 Does the law prevent him from making decisions if he's

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1 otherwise competent in his case?

2 A. His attorneys' ethical obligations to their
3 client prevent them from following that advice.

4 Q. If a doctor gets up on the stand, and says:
5 I'm Dr. Martinez. I've been this guy's lawyer -- I'm
6 sorry, psychologist for five or six months, or
7 whatever, has known him for all that time, has been
8 with him many, many times during the course of the --
9 his investigation, and he gets up on the stand and
10 tells a judge that this man is competent to make these
11 decisions, he knows what he's doing, his wits and his
12 faculties are about him, are you saying that kind of
13 evidence should be ignored by the trial counsel?

14 A. I'm not sure what you're saying.

15 Q. I'm saying if the doctor says he's -- he is
16 competent, that he's not suffering from suicidal
17 ideations, and not suffering from depression and that
18 he is competent to assist his attorneys in his
19 defense, a trial judge should disregard that witness's
20 statement?

21 A. No, I wouldn't expect -- I'm not sure what
22 the point of that witness's statements are being used.

23 Q. Well, if a lawyer -- if you were a lawyer,
24 it's obvious you would have done something different
25 from Mr. Jones and Mr. Garza; correct?

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1 A. Correct.

2 Q. And you say that makes them deficit because
3 they have a different approach?

4 A. I'm saying allowing a client to -- to control
5 the presentation of evidence in his defense is a
6 mistake.

7 Q. Well -- excuse me just a second.

8 So what you're saying is if you were in
9 the same position and you had a person telling you to
10 not put on a defense in your case, you would have done
11 exactly the opposite?

12 A. I would have put on the defense without -- I
13 would have ignored his request.

14 Q. And that's, again, your decision. That's
15 what you think your ethical obligation was?

16 A. Yes, that's correct.

17 Q. And, of course, that -- that doesn't mean
18 your ethical obligation -- that your feeling is cited
19 in a court of law; correct?

20 A. I'm sorry?

21 Q. The -- there's no -- the basis for your
22 decision is your personal decision, not an ethical
23 rule, not a standard in the courts that a lawyer has
24 to do; correct?

25 A. Sixth Amendment right to counsel guarantees a

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1 person that he is going to have effective
2 representation through every phase of his trial. For
3 an attorney at the most critical phase of his trial to
4 not put on evidence that would save his client's life
5 is deficient.

6 Q. Well, again, that is your opinion. But the
7 fact is you don't know whether or not that would have
8 saved his life or not?

9 A. I know he would have had a better chance if
10 that evidence had been presented.

11 Q. But the simple fact is you -- you -- when you
12 talked to counsel, you said their performances were
13 deficient, also leads --

14 A. In that respect, that's correct.

15 Q. -- also leads to the conclusion that it might
16 have been a different verdict, but you can't tell the
17 Court that, can you?

18 A. No, I mean --

19 MR. GROSS: I object to that, Your Honor.
20 The standard is whether you lack confidence in the
21 verdict, not whether it would be a different verdict.

22 THE COURT: Well, that's overruled. You
23 can answer the question.

24 Q. (BY MR. SKURKA) Well, the fact is you can't
25 guarantee the Judge that the verdict would have been

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1 different?

2 A. No.

3 Q. In fact, if Mr. -- carrying it further, if
4 Mr. Jones and Mr. Garza had disregarded Mr. Ramirez's
5 wishes and presented this evidence, the jury could
6 still have given found him guilty -- still could have
7 given him a death sentence; correct?

8 A. Sure.

9 Q. You just don't know, do you?

10 A. No.

11 MR. SKURKA: All right. We'll pass the
12 witness.

13 THE COURT: All right. Anything else?

14 MR. GROSS: Real briefly, Your Honor.

15 THE COURT: Okay.

16 REDIRECT EXAMINATION

17 BY MR. GROSS:

18 Q. The -- starting with the last part of the
19 cross-examination, Mr. Perkins, on the competency to
20 make the decision, again, you realize that was
21 Dr. Martinez's conclusion was based on one 30-minute
22 psychological evaluation that was deemed invalid;
23 correct? You had understand that, right?

24 A. Yes, I do.

25 Q. Now, looking at those Defense exhibits that I

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1 showed you earlier that were the articles out of
2 Mr. Garza's own trial Defense Counsel files, his own
3 file -- his own article said you still proceed with it
4 regardless; correct?

5 A. That's correct.

6 Q. And that's the standard under which Mr. Garza
7 was operating out of his file; correct?

8 MR. SKURKA: I'm going to object to that.
9 That's not a standard because you have an article in
10 your -- in your briefcase saying what strategy you
11 should do. That's no standard, Your Honor.

12 THE COURT: What's the objection?

13 MR. SKURKA: Okay. Let me think for a
14 second. I object that it's an improper question,
15 Judge, because it calls for a conclusion on the part
16 of the witness that's not based on the facts.

17 THE COURT: Well, that's overruled.

18 Q. (BY MR. GROSS) Going back to the Colorado
19 method, you said that since the Colorado method wasn't
20 used when talking about the stripping questions and
21 whatnot, you were cut off by the prosecutor and
22 weren't allowed to finish your answer regarding
23 sufficient information from the juror since the
24 Colorado method wasn't used. Do you recall that?

25 A. Yes.

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1 Q. And is that what you were getting at? We
2 don't have enough information now because the Colorado
3 method wasn't used?

4 A. Correct.

5 Q. The prosecutor said you can't look into the
6 minds of the jury in this case and -- and make a
7 determination; but that's also because of insufficient
8 questioning by the trial Defense Counsel; correct?

9 A. That's correct.

10 Q. Now, the prosecutor asked you about whether
11 or not you thought the jurors were lying or not or
12 giving honest answers. Do you recall that part of his
13 cross?

14 A. I do.

15 MR. GROSS: May I approach, Your Honor?

16 THE COURT: Yes, sir.

17 Q. (BY MR. GROSS) On page 50 of my writ that I
18 asked you to look at, citing the *Morgan v. Illinois*
19 U. S. Supreme Court case on page 50 towards the top,
20 even the Supreme Court says that it may be -- on this
21 issue, "It may be that a juror could in good
22 conscience swear to uphold the law and yet be unaware
23 that maintaining such dogmatic beliefs about the death
24 penalty would prevent him or her so from doing so."

25 A. That's exactly right because without asking

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1 the appropriate questions, you cannot exercise
2 peremptory challenges or actually challenges for cause
3 on individuals who -- whose dogmatic beliefs you can't
4 uncover.

5 Q. Especially, since even the jurors themselves
6 don't realize that it's an improper belief; right?

7 A. That's right.

8 Q. And then also, you read the general
9 questioning regarding fairness and impartiality that
10 was asked by trial Defense Counsel in this case;
11 correct?

12 A. Yes.

13 Q. And you would agree again in that *Morgan* case
14 from the U. S. Supreme Court at the top of page 50
15 where they say, "As to general questions of fairness
16 and impartiality, such jurors could in all truth and
17 candor respond affirmatively, personally confident
18 that such dogmatic views are fair and impartial, while
19 leaving the specific concern unprobed," which is their
20 views on the death penalty in that case; correct?

21 A. That is the exact purpose of the stripping
22 question.

23 Q. And then when that happens, you have an
24 inadequacy of voir dire that leaves the reviewing
25 Court to doubt that the Defendant was sentenced to

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1 death by a jury properly impaneled under the 14th
2 Amendment; correct?

3 A. That's correct.

4 Q. Which is what the U. S. Supreme Court was
5 saying at the bottom of page 49; right?

6 A. That's correct.

7 Q. Now, the prosecutor was asking you about the
8 experience that Mr. Garza and -- and Mr. Jones;
9 correct?

10 A. Yes, sir.

11 Q. Now, I'd like to show you pages 98 and 99 out
12 of the record from Mr. Jones -- from Mr. Garza's
13 testimony where he looked at the -- at the questioning
14 of Venireman Gilbert, the first venireman in the case.
15 And after a recess over the lunch hour when Mr. Garza
16 was given the opportunity to review the entire
17 questioning, you understand that he said that after
18 looking at pages 49 and 50 of the writ that you and I
19 just covered just now, that he agreed that Mr. Jones's
20 questioning of Venireman Gilbert gave only generalized
21 answers instead of specialized answers required, and
22 he said he agreed to that; correct?

23 MR. SKURKA: Objection, Your Honor. This
24 has been asked and answered, Your Honor, on direct.

25 THE COURT: Sustained.

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1 Q. (BY MR. GROSS) So what I am getting at is
2 just because these folks have some more experience
3 than maybe someone else does, they can still be
4 ineffective in a case; correct?

5 A. Sure.

6 Q. And you're confident in this case that their
7 performance was deficient in the questioning of these
8 veniremen; correct?

9 A. And, again, I don't know -- any of the rest
10 of their performance, again, I -- they're both really
11 good attorneys, but from what I have seen they -- they
12 were not asking the proper questions during the course
13 of the impaneling of the jury.

14 MR. GROSS: No further questions.

15 THE COURT: Anything else?

16 RECROSS-EXAMINATION

17 BY MR. SKURKA:

18 Q. Mr. Gross was talking about the -- he
19 didn't -- Mr. Garza didn't follow the articles that he
20 had in his briefcase or in his box. That wouldn't
21 make a difference on the outcome of the case, could
22 it, by the fact you don't follow an article?

23 A. I wouldn't have any idea, Mark.

24 Q. In fact, I have got an article here about how
25 to cross-examine defense lawyers on the Colorado

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1 method --

2 A. Has it worked?

3 Q. -- of jury selection, and I am just wondering
4 if I don't follow this article does that mean it's
5 wrong, that it's deficient performance because I
6 didn't follow that in cross-examining you the way it
7 says I should? Doesn't mean I'm deficient, does it?

8 A. No.

9 Q. Okay. Thanks.

10 THE COURT: Anything else?

11 MR. GROSS: No, sir.

12 THE COURT: All right. You may stand
13 down.

14 THE WITNESS: Thank you, Your Honor.

15 MR. GROSS: We rest, Your Honor.

16 THE COURT: All right. Anything else?
17 Any other witnesses?

18 MR. NORMAN: State has no other
19 witnesses, Your Honor.

20 THE COURT: All right. Do you-all want
21 to do closing arguments on this matter?

22 MR. GROSS: It -- it would be real brief,
23 Your Honor.

24 THE COURT: Okay.

25 MR. GROSS: It's all pretty -- pretty

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1 straightforward. Now, by the way, I know I mentioned
2 before, but I just wanted to clarify that Mr. Norman
3 and I did discuss to save time, we weren't calling the
4 family members and that the affidavits would be
5 sufficient in this case, and that's still okay, I
6 assume?

7 MR. NORMAN: Yes, we won't object to the
8 affidavits of the family members. State wouldn't
9 object to the affidavits in general, the Court
10 considering the affidavits on file.

11 THE COURT: Okay.

12 MR. GROSS: Now, usually I just rely,
13 Your Honor, on my findings of facts and conclusions of
14 law in a case that I submit to the Court, and I don't
15 know how busy you are, if you're going to be able to
16 go over those.

17 THE COURT: I am.

18 MR. GROSS: I have some judges, Your
19 Honor, you know, I won't do closing if you do like
20 some judges where they ask that we submit them
21 electronically, so the Judge --

22 THE COURT: I would prefer that.

23 MR. GROSS: -- would have their own
24 finding of facts and conclusions of law instead of
25 just signing off on someone's findings of facts and

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1 conclusions of law.

2 THE COURT: I would prefer that you
3 submit them electronically. Let's see, they have to
4 be submitted -- let's see here, let me give you a day.
5 Today is the 21st of October.

6 How about by the 11th of November?

7 MR. GROSS: I would respectfully request
8 30 days from when the record is completed, Your Honor,
9 if that would be okay, and I don't know how -- I would
10 say the majority of the record is done.

11 THE COURT: I think the majority of the
12 record is done in speaking with Mary because she has
13 been kind of doing it as she goes, so all she really
14 has to do is today's and --

15 MR. GROSS: I won't be able to draft them
16 real well, Your Honor, unless I have a copy of the
17 exhibits, except for the school records, and the
18 record on my desk so I can draft them that way.

19 THE COURT: Okay.

20 MR. GROSS: So we can do 30 days from
21 that.

22 THE COURT: I'll give you -- why don't we
23 do this, as soon as Mary files the -- the transcript,
24 I'll set a date and let you-all know.

25 MR. GROSS: Yes, sir.

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1 THE COURT: Okay?

2 MR. NORMAN: Yes, sir.

3 THE COURT: And then please submit them
4 electronically so I can --

5 MR. NORMAN: We -- would it be proper to
6 submit them both on paper and electronically?

7 THE COURT: Yeah, you can do both.

8 MR. NORMAN: Okay.

9 THE COURT: Absolutely.

10 MR. GROSS: Is WordPerfect okay, Judge?
11 Do you have WordPerfect?

12 THE COURT: I prefer Word.

13 MR. GROSS: Okay.

14 THE COURT: I think the newest version
15 converts pretty good, but I prefer Word.

16 MR. GROSS: Okay. Thank you.

17 THE COURT: All right. Thank you much.
18 (Conclusion of Writ proceedings.)

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1 THE STATE OF TEXAS)

2 COUNTY OF NUECES)

3 I, Mary Lopez Buitron, Official Court Reporter
4 in and for the 94th Judicial District Court of Nueces County,
5 State of Texas, do hereby certify that the above and foregoing
6 contains a true and correct transcription of portions of
7 evidence and other proceedings requested in writing by counsel
8 for the parties to be included in this volume of the Reporter's
9 Record, in the above-styled and numbered cause, all of which
10 occurred in open court or in chambers and were reported by me.

11 I further certify that this Reporter's Record of
12 the proceedings truly and correctly reflects the exhibits, if
13 any, admitted by the respective parties.

14 WITNESS MY OFFICIAL HAND this the 7th day of
15 December, A.D., 2011.

16 Mary Lopez Buitron
17 MARY LOPEZ BUITRON, CSR, RPR, Texas CSR #2731
18 Expiration Date: 12/31/2013
19 Official Court Reporter
20 94th District Court
21 Nueces County, Texas
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